89-370

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

JOE NATHAN PRICE, pro se,

Petitioners,

v.

DIGITAL EQUIPMENT CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOE NATHAN PRICE
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COUNSEL FOR PETITIONER

33P

QUESTIONS PRESENTED

A. DOES PRICE HAVE THE RIGHT TO A FAIR TRIAL IN A FEDERAL COURT OF LAW AND HOW MANY TIMES MUST HE BE FORCED TO ANSWER THE SAME QUESTIONS BEFORE GIVEN AN OPPORTUNITY TO PRESENT HIS CASE BEFORE A JURY TRIAL?

B. IS DIGITAL EQUIPMENT CORPORATION EXEMPT FROM THE LAWS GOVERNING THE CIVIL RIGHTS ACT OF 1964, THE ORDERS OF A SUBPOENA AND THE ORDERS OF DISTRICT JUDGE HUGHES DATED OCTOBER 18, 1988.

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A. DOES PRICE HAVE A RIGHT TO A FAIR TRIAL IN A FEDERAL COURT OF LAW AND HOW MANY TIMES MUST HE BE FORCED TO ANSWER THE SAME QUESTIONS BEFORE GIVEN AN OPPORTUNITY TO PRESENT HIS CASE BEFORE A JURY TRIAL?

B. IS DIGITAL EQUIPMENT CORPORATION EXEMPT FROM THE LAWS GOVERNING THE CIVIL RIGHTS ACT OF 1964, THE ORDERS OF A SUBPOENA AND THE ORDERS

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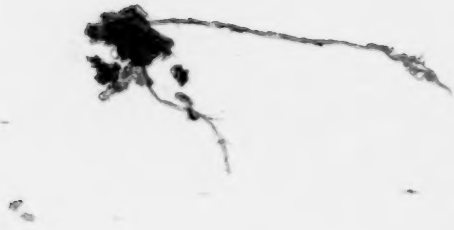

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, Joe Nathan Price, respectfully pray that a writ of certiorari issue to review the judgement order and opinion of the Fifth Circuit Court of Appeals in Joe Nathan Price v. Digital Equipment Corporation, Civ. Act. no. 89-2141 (5th cir. 1989); Before

REAVLEY, JONES and DUHE', Circuit Judges and Civ. Act. no. 87-6242 (5th Cir. 1988); Before CLARK Chief Judge, WILLIAMS and DAVIS, Circuit Judges.

OPINIONS BELOW

The order of the Fifth Circuit Court of Appeals panel appears at Civ. Act. no. 89-2141 (5th cir. 1989); Before REAVLEY, JONES and DUHE', Circuit Judges and is reprinted in the Appendix hereto, pages A 2-3. Rehearing was denied on June 6, 1989, and the order is reprinted and found in the Appendix page A 1.

The order of the Federal District Court Judge Lynn N. Hughes signed January 16th 1989, is also reprinted and included in the Appendix page A 4.

The opinion of the Fifth Circuit Court of Appeals panel appears at Civ. Act. no. 87-6242 (5th Cir. 1988); Before

CLARK Chief Judge, WILLIAMS and DAVIS, Circuit Judges, Vacating and Remanding this case for further processings and the first order of District Judge Hughes dismissing this case dated December 9, 1987, is also reprinted and found in Appendix pages A 5-13.

District Judge DeAnna's Final Order dated 14th day of July, 1987 is reprinted and included as Appendix page A 14.

JURISDICTION

The decision of the Fifth Circuit Court of Appeals was decided May, 1989. Rehearing was denied June 6, 1989. This Court's jurisdiction is invoked pursuant to section 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 2000e-5 and 42 U.S.C. section 1981, the 14th Amendment to the U.S. Constitution and 28 U.S.C.$1254(1).

The pendant jurisdiction of this court is also invoked over all apporopriate laws of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV of the United States Constitution is involved in the instant cause.

STATEMENT OF THE CASE

Price was hired by Digital Equipment Corporation (DEC) as a software specialist on January 2, 1982 and on Feburary 15, 1983 applied for an internal postion as Business Account Specialist. Price felt that he was treated unfairly during the interviewing process and denied the position due to his race.

On May 16, 1983 Mr Trujillo, software services unit manager, informed Price that he had been selected to participate

in an internal interview with Digital's Internal Equal Employment Opportunity Representatives from corporate headquarters. On May 18, 1983, Price met with Mr. Andrew McCallum, Digital's Senior EEO representative, and when asked if he felt that Black Employees received equal employment opportunities at DEC, Price voiced some complaints and concerns about unfair employment practices he and others of his race experienced at DEC. The following day, May 19, 1983, Price was informed by Jeral Harris, personnel representative, and Mr. Trujillo that his career with DEC would be stifled because he had discussed problems concerning Digital's Management Personnel.

As a direct result of the interview Price had with Digital's EEO representative, Price became the target of repeated harassment by Digital's managers and

on October 3, 1985 he was wrongfull terminated from employment with DEC.

On October 8, 1985, Price filed charges of race discrimination and harassment with the Houston District Equal Employment Opportunity Commission, allening that his discharge was racially motivated and violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. & 2000e et seq and on December 3, 1985, Price received from the EEOC a right-to-sue letter.

On February 4, 1986, Price filed a Title VII action against DEC in Federal Court. Price paid Attorney Francine Segars approximately three thousand dollars to file this case and to him represent in a deposition conducted by Digital's attorney July 24th, 25th, and 28th 1986. When Price could no longer afford to pay attorney fees to continue

this matter in court, Attorney Segars filed a motion to withdrew as counselor from this case on September 16, 1986 and on October 22, 1986, Price paid Attorney Segars to file a motion for the District Court tq appoint an attorney to represent Mr. Price so to ensure him a fair trial. However, on November 3, 1986, District Court Judge James DeAnna dismissed this case for want of prosecution without prejudice. Price filed two motions with the District Court for reinstatement of his case and both were denied.

July 14, 1987, Price refile the same lawsuit in Federal District Court with Judge Hughes presiding over the case. After a hearing, District Judge Hughes granted Digital's Motion for Summary Judgment on grounds that both Price Title VII suit and his claim under 42

U.S.C. 1981 suit are time barred. On June 15, 1988 the United States Court of Appeals, Fifth Circuit, vacated the district judgment of District Judge Hughes and remanded this case for further proceedings.

July 11, 1988, this case was reopened in District Court and on July 26, 1988 District Judge Hughes filed the Court's Scheduling Order. Price filed his first of several motions to compel DEC to corporate in Discovery on August 26, 1988 and on September 7, 1988 DEC filed a motion to compel Price to answer the same questions Price had already answered under deposition.

On October 18, 1988, District Judge Hughes ordered Digital to release its' employees home addresses and salary history. To this date DEC has refused to release the information as ordered by

the Court and inspit of Price's additional ongoing motions to compel DEC to cooperate in discovery all efforts have been in vain. Price filed the same ongoing motion to compel Digital to corporate in discovery on November 17, 1988 and again on January 18, 1988.

On November 3, 1988, District Judge Hughes ordered Price to Respond to Digital's Interrogatories by December 1, 1988. Price answered Digital's Interrogatories under deposition on July 24th, 25th, and 28th 1986, to the best of his ability and truthfully. However, Price was force to answer the same questions on September 6, 1988 and again on December 1, 1988. Price never got an opportunity to reveiw the deposition for corrections and certification.

On Jnauary 16, 1989, this case was dismissed with prejudice by District Judge Hughes on Digital Equipment Corporation's Motion to Dismiss and on January 22, 1989, Price filed an Appeal and requested that the United States Court of Appeals, For The Fifth Circuit, vacate the order of District Judge Hudges and remand this case for further proceedings in a Court of Law.

On May 4, 1989, the Fifth Circuit Ordered the Dismissal of Price's Brief on Digital's Motion To Dismiss, Or, In The Alternative, To Strike Appellant's Brief. Price's Motion for Reconsideration was also denied on June 6, 1989.

REASONS FOR GRANTING THE WRIT

DOES PRICE HAVE THE RIGHT TO A FAIR TRIAL IN A FEDERAL COURT OF LAW AND HOW MANY TIMES MUST HE BE FORCED TO ANSWER THE SAME QUESTIONS BEFORE GIVEN AN OPPORTUNITY TO PRESENT HIS CASE BEFORE A JURY TRIAL?

IS DIGITAL EQUIPMENT CORPORATION EXEMPT FROM THE LAWS GOVERNING THE CIVIL RIGHTS ACT OF 1964, THE ORDERS OF A SUBPOENA, AND THE ORDERS OF DISTRICT JUDGE HUGHES DATED OCTOBER 18, 1988.

In Price's Brief before the Fifth Circuit, Price construed District Judge Hughes' Order as a summary judgment and based his Summary Argument on Authorities from other cases regarding Summary Judgment. However, his Statement of Facts, along with the Record Excerpts and Pleadings of both Price and Digital makes crystal clear the issue before the Courts. Price now request that the United States Supreme Court review this case and grant the Writ of Certiorari.

A Certified Copy of Judgment by the United States Court of Appeals, for the Fifth Circuit, on June 15, 1988 was issued as Mandate on July 7, 1988, Vacating and Remanding to the District Court

for further proceedings and this case was reopened on July 26, 1988 and dismissed again by District Judge Lynn N. Hughes on January 16, 1989, without a Hearing. Price contrued the order as a summary judgment. Price had requested for a trial by jury and filed all required documents in accordance with District Judge Hughes' Scheduling Order. Price filed his witness list on September 12, 1988, and on December 19, 1988, filed a Separate Pretrial Order with the following attachemnts:

a. Plaintiff's Requested Quested in Jury Voir Dire.
b. Plaintiff's Proposed Jury Instructions.
c. Plaintiff's Proposed Jury Questions.
d. Plaintiff's Witness List.
e. Plaintiff's Exhibits List.

Digital Equipment Corporation is guilty of failure to cooporate in discovery and not Mr. Price. Digital has evaded the Facts of Price's original

complaint in which he charged that DEC has deliberately failed to create and maintain a work environment free of racial discrimination, harassment and retailiation and assure Equal Employment opportunities at DEC and as a direct result Price suffered and endured humiliation and harassment.

CONCLUSION

Price is entitle to a Fair Trial in a Federal Court of Law. For these various reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

_____

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 89-2141

JOE NATHAN PRICE,

Plaintiff-Appellant,

versus

DIGITAL EQUIPMENT CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Texas

---

Before REAVLEY, JONES AND DUHE', Circuit Judges.

B Y T H E C O U R T :

IT IS ORDERED that apellant's motion for reconsideration of this court's order dated May 4, 1989 granting appellee's motion to dismiss is denied.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 89-2141

JOE NATHAN PRICE,

Plaintiff-Appellant,

versus

DIGITAL EQUIPMENT CORPORATION,

Defendant-Appellee.

- - - - -

Appeal from the United States
District Court for the Southern
District of Texas

- - - - -

Before REAVLEY, JONES AND DUHE', Circuit Judges

BY THE COURT:

IT IS ORDERED that appelee's motion to dismiss the appeal is granted.

IT IS FURTHER ORDERED that appellee's alternative motion to strike appellant's brief is mute.

IT IS FUTHER ORDERED that appellee's motion for an extension of time to and including two weeks after the Court rules on its motion to dismiss within which to file its brief is mute.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOE NATHAN PRICE,	&	
	&	
Plaintiff,	&	
	&	
v.	&	CIVIL ACTION
	&	NO. H-87-2248
DIGITAL EQUIPMENT	&	
CORPORATION,	&	
	&	
Defendant.	&	

O R D E R

On Digital Equipment Corporation's motion, this case is dismissed with prejudice and Plaintiff must pay Defendant $500.00 for attorney's fees and expenses.

Signed this 16th day of January, 1989.

/s/ Jynn N. Hughes
UNITED STATES DISTRICT JUDGE

JOE NATHAN PRICE, Plaintiff-Appellant,

v.

DIGITAL EQUIPMENT CORPORATION,
Defendant-Appellee.

No. 87-6242
Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

June 15, 1988.

Discharged employee brought employment discrimination action against former employer. The United States District Court for the Sourthern District of Texas, Lynn N. Hughes, J., dismissed and former employee appealed. The Court of Appeals held that: (1) timely filing of Title VII action which was later dismissed for failure to prosecute did not toll the 90-day period to bringing a Title VII action; (2) two-year statute of limitations for personal injury actions in Texas, rather than one-year statute of limitations contained in the Texas Commission on Human Rights Act, governs claim of employment discrimination under & 1981; and (3) complaint brought within two years of employee's discharge was timely.

Vacated and remanded.

1. Civil Rights 40

Timely Title VII suit which was dismissed without prejudice for want of prosecution did not toll 90-day period for bringing suit on Title VII claim. Civil Rights Act of 1964, & 706(e), as amended, 42 U.S.C.A. & 2000e-5(f).

2. Federal Courts 714

Arguments must be briefed in order to be preserved for review. F.R.A.P. Rule 28(a)(4), 28 U.S.C.A.

3. Federal Courts 715

Issue of statue of limitations would not be deemed waived, even though appellant's only reference in brief to the issue was to assert that "this action is not time barred," where appellee was not prejudiced by deficient brief, as the sole issue in the case was whether the district court properly dismissed the action as time barred. F.R.A.P. Rule 28(a(4), 28 U.S.C.A.

4. Civil Rights 13.10

To the extent that civil rights complaint alleged that employee was discharged because of race, complaint filed less than two years after discharge was timely where action was governed by Texas two year statue of limitations for personal injury actions. 42 U.S.C.A. & 1981.

5. Civil rights 13.10

Texas tow-year statue of limitations for personal injury actions, rather than the one-year statue of limitations in the Texas Commission on Human Rights Act, applies to employment discrimination action under & 1981. 42 U.S.C.A. & 1981; Vernon's Ann. Texas Civ. St. art. 5221k.

Appeal from the United States District Court For the Southern District of Texas.

Before **CLARK**, Chief Judge, **WILLIAMS**, and **DAVIS**, Circuit Judges.

3824 **PRICE v. DIGITAL EQUIPMENT CORP.**

PER CURIAM:

Pro se appellant Joe Nathan Price appeals from an adverse summary judgment rendered against him dismissing his employment discrimination suit on grounds that it is time barred. We vacate and remand for further proceedings.

Price was employed as a computer software specialist by Digital Equipment Corporation (DEC) from January 1982 until October 1985. In April 1984, Price sued DEC alleging that he was the victim

of racial discrimination in the workplace. Defendant in that lawsuit did not receive service of process and the suit was dismissed for failure of service.

On October 3, 1985, DEC fired Price. Price immediately lodged an employment discrimination complaint with the Equal Employment Opportunity Commission (EEOC), alleging that his discharge was racially motivated and violated Title VII of the Civil Rights Act of 1964, 42 U.S.C & 2000e et seq. On December 3, 1985, Price received from the EEOC a right-to-sue letter. On February 4, 1986, Price filed a Title VII action against DEC in federal court. In November 1986, the district court dismissed Price's suit without prejudice for failure to prosecute.

In July 1987, Price refiled substantially the same lawsuit that was dismissed in 1986, except that he included a claim under 42 U.S.C. & 1981. After a hearing, the district court granted DEC's motion for summary judgment on grounds that both Price's Title VII suit and his & 1981 suit are time barred. The district court ruled that Price's Title VII suit is time barred because it was not filed within ninety days of Price's receipt of a right-to-sue letter from the EEOC. The court ruled that the Texas two-year statue of limitations for personal injury actions barred Price's & 1981 suit because Price knew as early as April 1984 of the facts giving rise to his complaint. Price appeals both dismissals.

[1] We agree with the district court that Price's Title VII suit is time barred. A private civil action under Title VII must be brought within ninety days of complainant's receipt of a right-to-sue letter from the EEOC. 42 U.S.C. & 2000e-5(f); see also Taylor v. Bunge Corp., 775 F.2d 617, 618 (5th Cir.1985). Price's original Title VII claim was timely, but was dismissed without prejudice for want of prosecution. That lawsuit did not toll the ninety-day period for the Title VII claim. See Taylor, 775 F2.d at 619.

The district court ruled that Price's & 1981 claim is time barred because Price knew of the facts giving rise to the complaint in April 1984, more than two years before his July 1987 lawsuit. On appeal, Price asserts in summary fashion that the district court erred in dismissing his lawsuit as time barred.

[2,3] Appellee urges at the outset that appellant's brief waived the limitations issue because it lacks an argument as required by rule 28(a)(4), Fed. R.App.P. The only reference appellant makes to the district court's dismissal of his lawsuit as time barred is to assert that "this action is not time barred." This fleeting reference points to the claimed error, but gives no analysis or authorities to support the assertion. Although we liberally construe the briefs of pro se appellants, Abdul-Alim Amin v. Universal Life Insurance Co of Memphis, 706 F.2d 638, 640 n. 1 (5th Cir. 1983), we also require that arguments must be briefed to be preserved.

In re Texas Mortgage Services, Inc., 761 F.2d 1068, 1073-74 (5th Cir. 1985). If appellee had suggested any prejudice that resulted from appellant's inadequate brief we would probably consider the limitations issue waived. But we are unable to preceive any prejudice to appellee from appellant's deficient brief. The sole issue in this case is whether the district court correctly dismissed appellant's lawsuit as time barred. No disputed facts cloud the resolution of this legal issue and appellee has fully addressed the issue. All that remains is to apply well settled law to the facts. Under these unique circumstances, we decline appellee's invitation to hold that appellant's brief waived the limitation issue. Cf. FSLIC v. Haralson, 813 F.2d 370, 37 n. 3 (11th Cir. 1987) (refusing to apply waiver because appellee not misled or hampered in its ability to respond).

[4] Price's complaint included allegations that he was discharged on account of his race in October 1985. because Price's discharge occurred less than two years before he filed this lawsuit, at least the part of the lawsuit complaining of discriminatory discharge was timely filed. See Bernard v. Gulf Oil Co., 596 F.2d 1249 (5th Cir.), reh'g granted, 604 F.2d 449 (5th Cir. 1979), aff'd in part and reversed on other grounds, 619 F.2d 459, 463 (5th Cir. 1980), aff'd 452 U. S. 89, 101 S. Ct. 2193, 68 L. Ed.2d 693 (1981). We therefore remand this case to the district court for further proceedings.

[5] Defendant offers two additional bases on which to sustain the summary judgment; neither has merit. Defendant first argues that we should borrow the one-year statute of limitations from the Texas Commission on Human rights Act, Tex. Civ.Code & 5221k (1988). Defendant acknowledges that this circuit has consistently applied the Texas limitations period for personal injury torts to & 1981 cases. Defendant contends, however, that the recently enacted Human Rights Act, which prohibits employment discrimination, now provides the more analogous Texas cause of action for employment discrimination suits filed under & 1981 suits.

In Goodman v. Lukens Steel Co., ---- U. S. ----, 107 S. Ct. 2617, 96 L.Ed.2d 572 (1987), plaintiffs argued that because & 1981 deals primarily with economic rights, especially contractual rights, a six-year limitation period governing suits for interference with contractual rights—was the most analogous state limitations period and should be borrowed to govern their & 1981 suit. The Supreme Court rejected plaintiffs' argument and held that a single state statute of limitations should govern all & 1981 claims and that the limitations period for personal injury torts is the most appropriate state statue of limitations. In reaching this conclusion, the Supreme Court held that the rule of Wilson v. Garcia, 417 U.S. 261, 266-68, 105 S.Ct. 1938, 1941-43, 85 L.Ed.2d 254 (1985),--- that the most analogous state statute of limitations for & 1983 lawsuits is the statute for personal injury

tort actions--is also applicable to § 1981 lawsuits. Goodman, ---- U.S. at -- 107 S.Ct. at 2621, 96 L.Ed.2d at 582.

Since the Wilson decision, we have applied the Texas two-year limitations period to § 1983 suits tried in Texas. See Peter Henderson Oil v. City of Port Arthur, Texas, 806 F.2d 1273, 1264-75 (5th Cir. 1987); Longoria v. City of Bay City, Texas, 779 F.2d 1136, 1137-38 (5th Cir. 1986). Goodman requires that we do the same for this § 1981 action.

Defendant also argues that summary judgment in this case is proper because Price's complaint states only conclusory allegations and he has produced no evidence that would justify granting him a trial. The district court declined to consider whether Price stated a claim and ruled only on the limitation issue. Defendant's argument is better addressed to the district court.

For the reasons given above, the judgment of the district court is vacated and remanded for further proceedings consistent with this opinion.

VACATED and REMANDED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOE NATHAN PRICE,	&	
	&	
Plaintiff,	&	
	&	
v.	&	CIVIL ACTION
	&	NO. H-87-2248
DIGITAL EQUIPMENT	&	
CORPORATION,	&	
	&	
Defendant.	&	

FINAL JUDGMENT

It is adjudged that Joe Nathan Price take nothing from Digital Equipment Corporation. The cost of court are taxed against Price.

Rendered at Houston, Texas, on November 30, 1987, and signed on December 9, 1987.

/s/ Lynn N. Hughes
Lynn N. Hughes
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOE NATHAN PRICE,	&	
	&	
Plaintiff,	&	
	&	
v.	&	CIVIL ACTION
	&	NO. H-86-503
DIGITAL EQUIPMENT	&	
CORPORATION,	&	
	&	
Defendant.	&	

ORDER

Insofar as Plaintiff's motion to notify seeks any relief, the Court

ORDERS it is DENIED without prejudice.

DONE in Houston, Texas, this 14th day of July, 1987.

/s/ James DeAnda
James DeAnda
UNITED STATES
DISTRICT JUDGE